

APA-3

**CERTIFICATION OF ADMINISTRATIVE RULES
FILED WITH THE LEGISLATIVE REFERENCE SERVICE
OTHNI LATHRAM, INTERIM DIRECTOR**

(Pursuant to Code of Alabama 1975, §41-22-6, as amended).
I certify that the attached is/are correct copy/copies of rule/s
as promulgated and adopted on the 3rd day of June, 2016, and
filed with the agency secretary on the 3rd day of June, 2016.

AGENCY NAME: Secretary of State

Amendment New Repeal (Mark appropriate space)

Rule No.

(If amended rule, give specific paragraph, subparagraphs, etc.,
being amended) Rule 820-2-10-.06(1)(a), 820-2-10-.06(1)(b), 820-
2-10-.06(2)(a)(1), 820-2-10-.06(2)(a)(2), 820-2-10-
.06(2)(a)(3), 820-2-10-.06(2)(b)(1)(a), 820-2-10-.06(2)(b)(1)(b),
820-2-10-.06(2)(b)(2), 820-2-10-.06(2)(b)(3), 820-2-10-
.06(2)(c)(1), 820-2-10-.06(2)(c)(2), 820-2-10-.06(2)(c)(3), 820-
2-10-.06(2)(c)(4), 820-2-10-.06(2)(c)(5)(a), 820-2-10-
.06(2)(c)(5)(b), 820-2-10-.06(2)(c)(5)(c), 820-2-10-.06(2)(c)(6),
820-2-10-.06(2)(c)(7), 820-2-10-.06(2)(c)(8), 820-2-10-
.06(2)(c)(9), 820-2-10-.06(2)(c)(10), 820-2-10-.06(2)(c)(11),
820-2-10-.06(2)(c)(12), 820-2-10-.06(2)(c)(13), 820-2-10-
.06(2)(d)(1), 820-2-10-.06(2)(d)(2)(a), 820-2-10-
.06(2)(d)(2)(b), 820-2-10-.06(2)(d)(2)(c),
820-2-10-.06(2)(e)(1), 820-2-10-.06(2)(e)(2), and 820-2-10-
.06(2)(e)(3).

Rule Title: Minimum Criteria to Ensure Secure Remote Electronic
Transmission of Blank Absentee Ballots and Procedures for Secure
Electronic Return of Voted Ballots.

ACTION TAKEN: State whether the rule was adopted with or without
changes from the proposal due to written or oral comments: The
rule was adopted without changes.

NOTICE OF INTENDED ACTION PUBLISHED IN VOLUME XXXIV, ISSUE NO. 7,
AAM, DATED April 29, 2016.

Statutory Rulemaking Authority: Code of Alabama 1975, section
17-11-40 et seq.

(Date Filed) (For LRS Use Only)

REC'D & FILED

JUN 03 2016

LEGISLATIVE REF SERVICE

J. H. Merrill

John H. Merrill
Secretary of State

(NOTE: In accordance with section 41-22-6(b), as amended, a proposed rule is required to be certified within 90 days after completion of the notice.)

820-2-10-.06 Minimum Criteria To Ensure Secure Remote Electronic Transmission Of Blank Absentee Ballots and Procedures for Secure Electronic Return of Voted Ballots. (1) The minimum criteria to ensure the secure electronic transmission of blank absentee ballots shall include the following:

(a) The capability for secure access by the overseas voter to the electronic ballot transmission server.

(b) The capability to verify the identity of the overseas voter before granting access to the electronic ballot transmission server.

(2) Procedures for Secure Electronic Return of Absentee

Ballots. (a) Eligibility to Return an Absentee Ballot by Electronic Transmission. Only the following voters are eligible to return an absentee ballot by electronic transmission:

(1) A member of the uniformed services while in the active service, or an eligible spouse or dependent of such a member, who is a permanent resident of the state and is temporarily residing outside of the territorial limits of the United States and the District of Columbia, who is qualified and registered to vote as provided by law.

(2) A member of the Merchant Marine of the United States, or an eligible spouse or dependent of such a member, who is a permanent resident of the state and is temporarily residing outside of the territorial limits of the United States and the District of Columbia, who is qualified and registered to vote as provided by law.

(3) Any other citizen of the United States who is a permanent resident of the state and is temporarily residing outside of the territorial limits of the United States and the District of Columbia, who is qualified and registered to vote as provided by law.

(b) The absentee election manager shall determine the eligibility of the absentee voter to return the absentee ballot by electronic transmission by evaluating the absentee ballot application submitted by said voter.

(1) If a voter requests to receive the absentee ballot by electronic transmission but the absentee ballot application does

not provide sufficient information to determine the voter's eligibility to return an absentee ballot by electronic transmission:

(a) the absentee election manager shall attempt to contact the voter and obtain supplemental information to determine the voter's eligibility to receive and return the absentee ballot by electronic transmission.

(b) Any supplemental information obtained by the absentee election manager shall be documented and kept with the original absentee ballot application.

(2) If the absentee election manager is unable to contact the voter to obtain supplemental information to determine eligibility and the only eligibility requirement that is in question relates to whether the voter is residing outside of the territorial limits of the United States and the District of Columbia, the absentee election manager shall consider the application prima facie evidence that the voter is eligible to return the absentee ballot by electronic transmission and shall document said determination.

(3) If a voter requests to return the absentee ballot by electronic transmission but the information available to the absentee election manager, either on the absentee ballot application or as provided by the voter as supplemental information, establishes that the voter is not residing outside of the territorial limits of the United States and the District of Columbia, the absentee election manager shall not permit the voter to return the ballot by electronic transmission.

(c) **Minimum Criteria To Ensure Secure Electronic Return of Voted Absentee Ballots.** The minimum criteria to ensure the secure electronic return of voted absentee ballots shall include the following:

(1) The capability for secure access by the overseas voter to the electronic ballot transmission server.

(2) The capability to verify the identity of the overseas voter before granting access to the electronic ballot transmission server.

(3) The capability for secure transmission of the voted ballot to the local absentee election manager.

(4) The capability to verify the identity of the overseas voter transmitting the voted ballot to the local absentee election manager.

(5) The use of encrypted information, including, but not limited to, ballots, passwords, and both public and private encryption keys.

(a) A public or private key encryption methodology shall include key generation under the control of the Secretary of State.

(b) A password protected private key shall be held secure by the county appointing board, as applicable, and never transmitted or otherwise divulged by any means.

(c) A password protected private key that is unique for each eligible overseas voter to digitally sign the ballot for transmission and storage before decryption by the canvassing board or the absentee election manager.

(6) The capability for auditing the secure remote voting application source code, and the capability for this application to be executed on a clean computer which, at a minimum, has a baseline operating system on its hard disk and no other software or driver installed.

(7) The capability to secure access to and from the overseas voter and the voting server or the voting database platform or both.

(8) The verification of the authenticity of the identity of the overseas voter before granting access to the transmission of election material.

(9) The capability for the overseas voter to determine that the secure transmission of election material was successful.

(10) The capability for the absentee election manager to segregate rejected ballots before decryption.

(11) The capability to record election material received by secure transmission.

(12) The capability for the absentee election manager to produce a marked paper ballot for each vote cast by secure transmission.

(13) The capability for the overseas voter to securely and electronically execute the "Overseas Voter Certificate" as provided for in §17-11-46, if the UOCAVA voter is submitting the voted ballot by secure electronic transmission.

(d) Electronic Return Of Absentee Ballots.

(1) When the voter has requested electronic transmission of the blank absentee ballot, that voter may choose to return the voted ballot and completed Overseas Voter Certificate via secure electronic transmission to the local absentee election manager if the voter is eligible to return the ballot by electronic transmission pursuant to rule 820-2-10-.06(2).

(2) In the event a voter chooses to return the completed ballot via secure electronic transmission to the local absentee election manager as authorized in (1),

(a) the absentee election manager shall determine if the electronic voted ballot is to be accepted or rejected;

(b) the absentee election manager shall print the electronic ballot if accepted, including supporting documentation; and

(c) the absentee election manager shall then place and seal the accepted voted ballot in a secrecy envelope and store with the other voted absentee ballots until they are to be counted on election day by the absentee election officials.

(e) Counting Of Absentee Ballots Returned by Electronic Transmission.

(1) No poll worker or other election official shall count an absentee ballot returned electronically unless the Overseas Voter Certificate has been properly completed and submitted by the voter.

(2) The absentee election manager shall make the determination as to whether the Overseas Voter Certificate is properly submitted.

(3) An Overseas Voter Certificate is properly submitted if it is signed and dated by the overseas voter.

Author: Edward Packard; Jean Brown.

Statutory Authority: Code of Ala. 1975, §§17-11-40 *et seq.*

History: New Rule: Filed March 28, 2014; effective
May 2, 2014. Amended: Filed June 3, 2016. Effective Date: July
18, 2016.